

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79123938
LAW OFFICE ASSIGNED	LAW OFFICE 105
MARK SECTION (no change)	
OWNER SECTION (current)	
NAME	Wild Candy Pty Ltd
STREET	PO Box 286
CITY	COOROY QLD
ZIP/POSTAL CODE	4563
COUNTRY	Australia
OWNER SECTION (proposed)	
NAME	Wild Candy Pty Ltd
STREET	PO Box 286
CITY	COOROY QLD
ZIP/POSTAL CODE	4563
COUNTRY	Australia
LEGAL ENTITY SECTION (current)	
TYPE	private company limited by shares (prc)
STATE/COUNTRY WHERE LEGALLY ORGANIZED	AU
LEGAL ENTITY SECTION (proposed)	
TYPE	proprietary limited company (p/l or pty. ltd.)
STATE/COUNTRY	

**WHERE
LEGALLY
ORGANIZED**

Australia

ARGUMENT(S)

This is in response to an final office action issued May 31, 2013, wherein the Examining Attorney has maintained a partial refusal to register Application Serial No. 79123938, as to International Classes 9, 12, 25, 35 and 41 only, on the stated ground that Applicant's mark SNEEZING BABY PANDA merely describes an ingredient, quality, characteristic, function, feature, purpose or use of Applicant's goods and services in these classes, citing Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1).

Preliminarily, to respond to the Examining Attorney's request for clarification of Applicant's business entity type, Applicant hereby confirms that the Examining Attorney may amend the entity type of Applicant to "Proprietary Limited Company."

Regarding the descriptiveness refusal, Applicant disagrees with the Examining Attorney's position and, for the reasons set forth below, believes its mark is not merely descriptive of Applicant's goods and services. Applicant respectfully requests that the Examining Attorney withdraw the refusal, and in support thereof submits the following arguments and evidence.

The identification of goods and services, as amended, in those International Classes as to which registration has been refused, is:

Class 9:

Digital media, namely, pre-recorded CDs, DVDs, video cassettes, digital video discs, digital versatile discs and high definition digital discs featuring audio and visual content in the nature of exposed cinematograph films, theatrical performances and music; electronic games, namely, electronic game software, electronic game programs and downloadable electronic games via the Internet and wireless devices

Class 16:

Paper, cardboard, and goods made from these materials, not included in other classes, namely, printed posters; photographs; stationery; printed instructional and teaching material except apparatus in the field of animals, nature and the environment; books, namely, children's books, comic books, coloring books, series of fiction books, series of non-fiction books in the field of animals, nature and the environment and educational books and coffee table books featuring animals, nature and the

environment; brochures about animals, nature and the environment; publications, namely, magazine hand-outs and workbooks in the field of animals, nature and the environment; printed event programs and souvenir programs concerning animals, nature and the environment; face and facial tissues of paper

Class 25:

Clothing, namely, t-shirts, sweat shirts and jackets; footwear; headgear, namely, hats and caps

Class 35:

Promotion of theatrical performances, concerts, cinematograph films and musical works for others

Class 41:

Production of cinematograph films, television programs and documentary films; entertainment, namely, live music concerts and orchestra performances; electronic publication services, namely, digital video, audio, and multimedia publishing services regarding cinematograph films, theatrical performances and music; electronic publication of text and graphic works of others on CD, DVD and on-line featuring animals, nature and the environment; entertainment services, namely, theatrical and musical floor shows provided at performance venues.

In light of the above identification, Applicant wishes to emphasize the governing legal principles determinative of whether or not an applied for mark merely describes a feature of an applicant's applied for goods and services under Trademark Act Section 2(e)(1).

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the goods or services at issue. However, a mark is suggestive, and therefore registrable on the Principal Register without a showing of acquired distinctiveness, if imagination, thought or perception is required to reach a conclusion on the nature of the goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

The question of whether a particular term is merely descriptive is not decided in the abstract. The test is not whether prospective consumers can guess what an applicant's goods or services are after seeing that applicant's mark alone. Rather, the determination of whether a mark is merely descriptive is considered in relation to the identified goods and services. In re Abcor Dev. Corp., 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b). A trademark is merely descriptive only if it directly gives accurate or distinct knowledge of the characteristics of those goods or services. Blisscraft of Hollywood v. United Plastics Company, 294 F.2d 694, 131 U.S.P.Q. 55 (2nd Cir. 1961).

The proper test in determining whether a mark is merely descriptive is to consider the mark in relation to the goods and services applied for, the context in which the mark would be used, and the significance that the mark is likely to have on the average consumer encountering the goods in the marketplace. This determination must be made specifically in relation to the goods or services for which registration is sought. In re Omaha National Corp., 819 F.2d 1117, 2 U.S.P.Q.2d 1859 (Fed. Cir. 1987).

For purposes of Trademark Act Section 2(e)(1), Applicant's mark SNEEZING BABY PANDA does not describe an ingredient, quality, characteristic, function, feature, purpose or use of the identified goods or services in Classes 9, 16, 25, 35 or 41.

As Applicant pointed out in its response, filed May 1, 2013, to the Examining Attorney's first office action, and as its website materials submitted in evidence by the Examining Attorney attest, Applicant is a film maker specializing in documentary film making and distribution. Several years ago Applicant was filming in the Wolong Panda Breeding Centre in China's Sichuan province. A female panda was munching a piece of bamboo bread, oblivious of the fact her six week old son was hungry too. Clearly frustrated as well as starving, the tiny panda cub suddenly let loose with his now infamous sneeze. The moment was recorded on film (the "Film Footage") and "Sneezing Baby Panda" was born. A television program created and produced by Applicant entitled "Little Pandas – The New Breed" featured the Film Footage. The Film Footage was unlawfully reproduced from this television program and unlawfully uploaded onto the Internet and has since that time gone viral. Applicant is the exclusive copyright owner of the Film Footage, and has licensed the Film Footage in the United States and elsewhere.

As is obvious from the amended identification of goods and services, the goods and services of Applicant may be anchored in the Film Footage promoting the mark SNEEZING BABY PANDA as an indicator of source, but those goods and services, on the face of the identification, do not consist of the Film Footage itself, even though some of those goods and services may derive from it.

It is crystal clear from the Examining Attorney's remarks, Applicant's submissions, and the evidence of record that there is one, and only one, SNEEZING BABY PANDA. The mark SNEEZING BABY PANDA is not a term descriptive of pandas or baby pandas in general. The Examining Attorney and Applicant agree that SNEEZING BABY PANDA refers to one unique baby panda at one point in time, the panda cub who let loose with his famous sneeze memorialized in the Film Footage. SNEEZING BABY PANDA has a unique referent, and the Examining Attorney knows it. The subject matter content of some of

Applicant's goods or services may or may not include pandas, but they may also have to do with other species of animals, nature and the environment, and the unique referent SNEEZING BABY PANDA is intended to be used by Applicant as a source indicator for its family of goods and services so branded. Therefore, the mark should not be regarded as merely descriptive, and the Examining Attorney's comments should be reviewed in this context.

The Examiner Attorney contends in his office action that:

"In this case, the proposed mark SNEEZING BABY PANDA merely describes pre-recorded CDs and DVDs and other media, printed matter, clothing, promotional services, entertainment services and publishing services featuring images and/or information about an extremely young black-and-white mammal caught in the act of making a sudden violent spasmodic audible expiration of breath through the nose and mouth."

Applicant pointed out in its previous response to the first office action that the Examining Attorney had submitted no evidence which supports this contention. In response, the Examining Attorney states in his final office action:

"However, contrary to applicant's comment, the sample dictionary definitions and Internet printouts from applicant's website attached to the Office Action mailed January 30, 2013 unambiguously display information and videos about a "tiny panda cub [that] let loose with [a] no infamous sneeze" and "sneezing pandas" while also showing a "t-shirt featuring a freeze frame from the original video clip" of "[t]hat sneezing moment which sent mother panda into orbit!" Therefore, inasmuch as applicant has turned a blind-eye and casually dismissed the evidence of record, applicant's argument is not persuasive.

"Material obtained from applicant's website is acceptable as competent evidence."

To be clear, Applicant did not previously and does not now object to the Examining Attorney's reference to its website in this regard. Moreover, Applicant finds the Examining Attorney's charge that it "has turned a blind-eye and casually dismissed the evidence of record" odd given Applicant's previous response. Applicant maintains that the referenced information and materials from Applicant's website in fact do not support the refusal.

Applicant has used the applied for mark SNEEZING BABY PANDA in Australia and elsewhere since the broadcast of the television program, and owns and operates the website www.sneezingbabypana.com referenced by the Examining Attorney. As indicated in Applicant's

previous response, currently only t-shirts bearing the mark are available for purchase online, but Applicant intends to extend the range of merchandise available for purchase in the United States and elsewhere. As stated in Applicant's previous response, such merchandise is not intended to be limited in subject matter to pandas, but rather will feature animals generally, nature and the environment.

The Examining Attorney notes Applicant considers the refusal unwarranted because the identified goods are not intended to be limited in subject matter to pandas, but rather will feature animals generally, nature and the environment, yet then argues:

"However, '[a] mark may be merely descriptive even if it does not describe the 'full scope and extent' of the applicant's goods or services.'

"In this case, the wording "SNEEZING BABY PANDA" describes at least one aspect of the identified goods and services; namely, pre-recorded media, printed matter, clothing, promotional services, entertainment services and publishing services featuring images and/or information about sneezing young panda bear.

"What's more, inasmuch as applicant concedes that 'the term 'SNEEZING BABY PANDA' may be regarded as descriptive of the film footage" featured and promoted in connection with its goods and services, consumers will immediately recognize and perceive the nature of the products and services."

The Examining Attorney's statement here blindly ignores Applicant's submission in its previous response that its merchandise under the SNEEZING BABY PANDA mark is not intended to be limited in subject matter to pandas, but rather will feature animals generally, nature and the environment. Thus, the mark SNEEZING BABY PANDA does not describe "at least one aspect of the identified goods and services" because those goods or services may or may not involve pandas, as the amended identification of goods and services makes clear. Again, the unique one-off baby panda referenced by the mark SNEEZING BABY PANDA is intended to be used as a source indicator for the applied for goods and services, in the nature of a mascot or flag bearer.

As emphasized in Applicant's previous response, the registration of the applied for mark by Applicant will not preclude others from making descriptive fair use of the term "Sneezing Baby Panda" to describe Applicant's Film Footage. That said, however, Applicant's exclusive ownership of the Film Footage and extensive and substantially exclusive use of the mark SNEEZING BABY PANDA throughout

Australia, the United States, and worldwide, means that the mark is capable of distinguishing Applicant's applied for goods and services from the goods and services of competitors. Indeed, given the fame of the Film Footage and its association with Applicant as the film maker, there is no reason why another trader would wish to use the same mark on the same or similar goods or services unless with improper motive.

The Examining Attorney further contends that:

"In this case, the combination of the descriptive words SNEEZING, BABY and PANDA creates no incongruity or unique commercial impression apart from that of the previously-stated descriptive connotation, and no imagination is required to understand the nature of the goods and services. Accordingly, the mark is merely descriptive."

While the term "Sneezing Baby Panda" may be regarded as descriptive of the Film Footage, in the sense that it is the title of a copyrighted work, and the title is closely associated with Applicant as the maker of the Film Footage, the trademark SNEEZING BABY PANDA describes Applicant as the source of its applied for goods and services, akin to the way a mascot might identify a sports team, but it does not describe those goods or services.

Moreover, Applicant maintains as stated in its previous response to office action that even if the terms SNEEZING, BABY and PANDA might be regarded as descriptive of the Film Footage, the composition SNEEZING BABY PANDA in combination, used in connection with Applicant's goods and services as amended, are not descriptive.

Assuming arguendo that the separate terms contained in Applicant's mark might be regarded as descriptive, a mark comprising a combination of descriptive components is registrable if the combination of terms creates a unitary mark. In re Colonial Stores Inc., 394 F.2d 549, 157 USPQ 382 (CCPA 1968); In re Shutts, 217 USPQ 363 (TTAB 1983); TMEP Section 1209.03(d). Applicant reiterates that its compound mark SNEEZING BABY PANDA is not descriptive, because the combination of terms, composed of three two-syllable words, possesses a special rhythmic quality creating a unitary mark.

The compound mark SNEEZING BABY PANDA is not descriptive. If at all, the mark is suggestive of, rather than descriptive of, the Applicant's goods and services. In considering whether a mark is merely descriptive, the question is whether the mark "only" tells the potential purchaser what the goods or services are, their function, their characteristics, their use, or their ingredients. Here, Applicant's mark does not "only" describe or "only" tell potential purchasers about the nature, function, characteristics or purpose of Applicant's goods or services in Classes 9, 16, 25, 35 or 41, because SNEEZING BABY PANDA in

connection with the goods and services applied for in those classes is an incongruous expression, *see Blisscraft of Hollywood v. United Plastics Company*, 294 F.2d 694, 131 U.S.P.Q. 55 (2nd Cir. 1961) and *Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (C.C.P.A. 1968).

Applicant's mark is a word combination that is not readily recognizable as describing a particular characteristic, purpose or feature of applicant's goods with any degree of specificity. The mark does not convey any immediate and unambiguous meaning.

The three-word compound mark creates ambiguity. In consequence thereof, actual and prospective consumers who encounter the mark in connection with Applicant's goods or services in the marketplace would have to engage in a multi-stage reasoning process, involving pausing, reflecting and then speculating on the significance of the combined designation, in order to understand how it relates to Applicant's goods.

Thus, the mark SNEEZING BABY PANDA for Applicant's goods and services, as amended, is not merely descriptive of any characteristic, purpose or feature of Applicant's goods and services in the relevant classes. Accordingly, Applicant respectfully requests that the Examining Attorney withdraw the refusal of registration on grounds of descriptiveness.

Applicant reemphasize that it is the policy of the U.S. Patent and Trademark Office to resolve any doubt as to descriptiveness in favor of Applicant. *In re Women's Publishing Co.*, 23 USPQ2d 1876, 1878 (TTAB 1992) (citing *In re Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 822 F.2d 1567, 4 USPQ2d 1141, 1144 (Fed. Cir. 1987)). The distinction between merely descriptive and suggestive is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. *In re George Weston Ltd.*, 228 USPQ 57, 58 (TTAB 1985). Accordingly, to the extent there may be any doubt as to whether an Applicant's mark is merely descriptive or suggestive, such doubt is resolved, in accordance with the Board's policy, in favor of the applicant by allowing publication of the mark for opposition.

Upon publication of Applicant's mark, anyone who believes that they would be damaged by the registration of the mark will have the opportunity to file an opposition thereto. Such an entity may well be in a stronger position to make the case for competitive need for use of this term than is the Office in an *ex par* context. *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987). Further, anyone who believes he or she will be injured by the registration of SNEEZING BABY PANDA "will have an opportunity to develop a factual record upon which the question of descriptiveness could be adjudicated with more confidence than it can be on the basis of *a priori* assumptions." *In re*

Waverly Inc., 27 USPQ2d 1620, 1624 (TTAB 1993), citing In re Merrill Lynch, Pierce, Fenner & Smith, 828 F.2d at 1571.

In response to the Examining Attorney's request for additional information about the applied for goods and services, Applicant previously submitted that its applied for goods and services, as amended, do not necessarily have to do with pandas, but rather may feature animals generally, nature and the environment. Additional information about the Applicant was amply provided in its previous response to office action, much of which was made of record by the Examining Attorney in his first office action. Applicant specifically stated in its first response that: "[C]urrently only t-shirts bearing the mark are available for purchase online, but Applicant intends to extend the range of merchandise available for purchase in the United States and elsewhere. Such merchandise is not intended to be limited in subject matter to pandas, but rather will feature animals generally, nature and the environment."

Since the application is a Madrid System extension of protection based on Section 66(a) of the Trademark Act, founded on Applicant's intent to use the mark in United States commerce, Applicant submits that its previous response to office action, together with the information the Examining Attorney has already made of record, is sufficient to permit proper examination of the application. The Examining Attorney's renewed request merely parrots boilerplate office action verbiage appropriate to a use-based application under Section 1(a), but inappropriate to examination of an application based on bona fide intent to use in U.S. commerce, e.g., under Sections 1(b) or 66(a).

Nevertheless, Applicant hereby volunteers the additional information for the Examining Attorney's consideration attached to this response consisting of various third party webpages corroborating and attesting to the fame of the Film Footage and Applicant's association with the mascot for its applied for goods and services dubbed SNEEZING BABY PANDA. This additional information and submitted materials, together with the evidence and submissions of record, more than amply demonstrate the capacity of SNEEZING BABY PANDA to serve as a non-descriptive source indicator for Applicant's goods and services, and Applicant's entitlement to exploit same as a trademark in United States commerce, as it intends to do.

Based on all of the foregoing, Applicant respectfully requests that the Examining Attorney withdraw the refusal under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), and allow the application to proceed to publication.

EVIDENCE SECTION	
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DESCRIPTION OF EVIDENCE FILE	webpages
ADDITIONAL STATEMENTS SECTION	
MISCELLANEOUS STATEMENT	Regarding the Examining Attorney's request for further information in regard to the applied for goods in Classes 3, 5, 21, 28 and 30, Applicant replies as follows: 1. Do any of the goods feature images and/or information of a sneezing baby panda? The goods may or may not do so. 2. Do any of the goods feature images and/or information of a panda? The goods may or may not do so. 3. Do any of the goods take the form/shape of sneezing baby panda? The goods may or may not do so. 4. Do any of the goods take the form/shape of a panda? The goods may or may not do so. 5. Are any of the identified goods intended for use with a panda? The goods may or may not do so.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/wjs/
SIGNATORY'S NAME	William J. Seiter
SIGNATORY'S POSITION	Attorney
DATE SIGNED	10/11/2013

AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Oct 11 22:08:51 EDT 2013
TEAS STAMP	USPTO/RFR-71.189.193.159-20131011220851737938-79123938-500ebe9fa51f12db6331eb9a43e5cec463962e381f5b3f2414793d9084a36b9312-N/A-N/A-20131011214928414970

PTO Form 1930 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 05/31/2014)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **79123938** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

This is in response to an final office action issued May 31, 2013, wherein the Examining Attorney has maintained a partial refusal to register Application Serial No. 79123938, as to International Classes 9, 16, 25, 35 and 41 only, on the stated ground that Applicant's mark SNEEZING BABY PANDA merely describes an ingredient, quality, characteristic, function, feature, purpose or use of Applicant's goods and services in these classes, citing Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1).

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Class 16:

Paper, cardboard, and goods made from these materials, not included in other classes, namely, printed posters; photographs; stationery; printed instructional and teaching material except apparatus in the field of animals, nature and the environment; books, namely, children's books, comic books, coloring books, series of fiction books, series of non-fiction books in the field of animals, nature and the environment and educational books and coffee table books featuring animals, nature and the environment; brochures about animals, nature and the environment; publications, namely, magazines, hand-outs and workbooks in the field of animals, nature and the environment; printed event programs and souvenir programs concerning animals, nature and the environment; face and facial tissues of paper

Class 25:

Clothing, namely, t-shirts, sweat shirts and jackets; footwear; headgear, namely, hats and caps

Class 35:

Promotion of theatrical performances, concerts, cinematograph films and musical works for others

Class 41:

Production of cinematograph films, television programs and documentary films; entertainment, namely, live music concerts and orchestra performances; electronic publication services, namely, digital video, audio, and multimedia publishing services regarding cinematograph films, theatrical performances and music; electronic publication of text and graphic works of others on CD, DVD and on-line featuring animals, nature and the environment; entertainment services, namely, theatrical and musical floor shows provided at performance venues.

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The proper test in determining whether a mark is merely descriptive is to consider the mark in relation to the goods and services applied for, the context in which the mark would be used, and the significance that the mark is likely to have on the average consumer encountering the goods in the marketplace. This determination must be made specifically in relation to the goods or services for which registration is sought. In re Omaha National Corp., 819 F.2d 1117, 2 U.S.P.Q.2d 1859 (Fed. Cir. 1987).

For purposes of Trademark Act Section 2(e)(1), Applicant's mark SNEEZING BABY PANDA does not describe an ingredient, quality, characteristic, function, feature, purpose or use of the identified goods or services in Classes 9, 16, 25, 35 or 41.

As Applicant pointed out in its response, filed May 1, 2013, to the Examining Attorney's first office action, and as its website materials submitted in evidence by the Examining Attorney attest, Applicant is a film maker specializing in documentary film making and distribution. Several years ago Applicant was filming in the Wolong Panda Breeding Centre in China's Sichuan province. A female panda was munching a piece of bamboo bread, oblivious of the fact her six week old son was hungry too. Clearly frustrated as well as starving, the tiny panda cub suddenly let loose with his now infamous sneeze.

The moment was recorded on film (the “Film Footage”) and “Sneezing Baby Panda” was born. A television program created and produced by Applicant entitled “Little Pandas – The New Breed” featured the Film Footage. The Film Footage was unlawfully reproduced from this television program and unlawfully uploaded onto the Internet and has since that time gone viral. Applicant is the exclusive copyright owner of the Film Footage, and has licensed the Film Footage in the United States and elsewhere.

As is obvious from the amended identification of goods and services, the goods and services of Applicant may be anchored in the Film Footage promoting the mark SNEEZING BABY PANDA as an indicator of source, but those goods and services, on the face of the identification, do not consist of the Film Footage itself, even though some of those goods and services may derive from it.

It is crystal clear from the Examining Attorney’s remarks, Applicant’s submissions, and the evidence of record that there is one, and only one, SNEEZING BABY PANDA. The mark SNEEZING BABY PANDA is not a term descriptive of pandas or baby pandas in general. The Examining Attorney and Applicant agree that SNEEZING BABY PANDA refers to one unique baby panda at one point in time, the panda cub who let loose with his famous sneeze memorialized in the Film Footage. SNEEZING BABY PANDA has a unique referent, and the Examining Attorney knows it. The subject matter content of some of Applicant’s goods or services may or may not include pandas, but they may also have to do with other species of animals, nature and the environment, and the unique referent SNEEZING BABY PANDA is intended to be used by Applicant as a source indicator for its family of goods and services so branded. Therefore, the mark should not be regarded as merely descriptive, and the Examining Attorney’s comments should be reviewed in this context.

The Examiner Attorney contends in his office action that:

“In this case, the proposed mark SNEEZING BABY PANDA merely describes pre-recorded CDs and DVDs and other media, printed matter, clothing, promotional services, entertainment services and publishing services featuring images and/or information about an extremely young black-and-white mammal caught in the act of making a sudden violent spasmodic audible expiration of breath through the nose and mouth.”

Applicant pointed out in its previous response to the first office action that the Examining Attorney had submitted no evidence which supports this contention. In response, the Examining Attorney states in

his final office action:

“However, contrary to applicant’s comment, the sample dictionary definitions and Internet printouts from applicant’s website attached to the Office Action mailed January 30, 2013 unambiguously display information and videos about a “tiny panda cub [that] let loose with [a] now infamous sneeze” and “sneezing pandas” while also showing a “t-shirt featuring a freeze frame from the original video clip” of “[t]hat sneezing moment which sent mother panda into orbit!” Therefore, inasmuch as applicant has turned a blind-eye and casually dismissed the evidence of record, applicant’s argument is not persuasive.

“Material obtained from applicant’s website is acceptable as competent evidence.”

To be clear, Applicant did not previously and does not now object to the Examining Attorney’s reference to its website in this regard. Moreover, Applicant finds the Examining Attorney’s charge that it “has turned a blind-eye and casually dismissed the evidence of record” odd given Applicant’s previous response. Applicant maintains that the referenced information and materials from Applicant’s website in fact do not support the refusal.

Applicant has used the applied for mark SNEEZING BABY PANDA in Australia and elsewhere since the broadcast of the television program, and owns and operates the website www.sneezingbabypanda.com referenced by the Examining Attorney. As indicated in Applicant’s previous response, currently only t-shirts bearing the mark are available for purchase online, but Applicant intends to extend the range of merchandise available for purchase in the United States and elsewhere. As stated in Applicant’s previous response, such merchandise is not intended to be limited in subject matter to pandas, but rather will feature animals generally, nature and the environment.

The Examining Attorney notes Applicant considers the refusal unwarranted because the identified goods are not intended to be limited in subject matter to pandas, but rather will feature animals generally, nature and the environment, yet then argues:

“However, ‘[a] mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.’

“In this case, the wording “SNEEZING BABY PANDA” describes at least one aspect of the identified goods and services; namely, pre-recorded media, printed matter, clothing, promotional services, entertainment services and publishing services featuring images and/or information about a sneezing young panda bear.

“What’s more, inasmuch as applicant concedes that ‘the term ‘SNEEZING BABY PANDA’ may be regarded as descriptive of the film footage” featured and promoted in connection with its goods and services, consumers will immediately recognize and perceive the nature of the products and services.”

The Examining Attorney’s statement here blindly ignores Applicant’s submission in its previous response that its merchandise under the SNEEZING BABY PANDA mark is not intended to be limited in subject matter to pandas, but rather will feature animals generally, nature and the environment. Thus, the mark SNEEZING BABY PANDA does not describe “at least one aspect of the identified goods and services” because those goods or services may or may not involve pandas, as the amended identification of goods and services makes clear. Again, the unique one-off baby panda referenced by the mark SNEEZING BABY PANDA is intended to be used as a source indicator for the applied for goods and services, in the nature of a mascot or flag bearer.

As emphasized in Applicant’s previous response, the registration of the applied for mark by Applicant will not preclude others from making descriptive fair use of the term “Sneezing Baby Panda” to describe Applicant’s Film Footage. That said, however, Applicant’s exclusive ownership of the Film Footage and extensive and substantially exclusive use of the mark SNEEZING BABY PANDA throughout Australia, the United States, and worldwide, means that the mark is capable of distinguishing Applicant’s applied for goods and services from the goods and services of competitors. Indeed, given the fame of the Film Footage and its association with Applicant as the film maker, there is no reason why another trader would wish to use the same mark on the same or similar goods or services unless with improper motive.

The Examining Attorney further contends that:

“In this case, the combination of the descriptive words SNEEZING, BABY and PANDA creates no incongruity or unique commercial impression apart from that of the previously-stated descriptive connotation, and no imagination is required to understand the nature of the goods and services. Accordingly, the mark is merely descriptive.”

While the term “Sneezing Baby Panda” may be regarded as descriptive of the Film Footage, in the sense that it is the title of a copyrighted work, and the title is closely associated with Applicant as the maker of the Film Footage, the trademark SNEEZING BABY PANDA describes Applicant as the source

of its applied for goods and services, akin to the way a mascot might identify a sports team, but it does not describe those goods or services.

Moreover, Applicant maintains as stated in its previous response to office action that even if the terms SNEEZING, BABY and PANDA might be regarded as descriptive of the Film Footage, the composite SNEEZING BABY PANDA in combination, used in connection with Applicant's goods and services as amended, are not descriptive.

Assuming arguendo that the separate terms contained in Applicant's mark might be regarded as descriptive, a mark comprising a combination of descriptive components is registrable if the combination of terms creates a unitary mark. In re Colonial Stores Inc., 394 F.2d 549, 157 USPQ 382 (CCPA 1968); In re Shutts, 217 USPQ 363 (TTAB 1983); TMEP Section 1209.03(d). Applicant reiterates that its compound mark SNEEZING BABY PANDA is not descriptive, because the combination of terms, composed of three two-syllable words, possesses a special rhythmic quality creating a unitary mark.

The compound mark SNEEZING BABY PANDA is not descriptive. If at all, the mark is suggestive of, rather than descriptive of, the Applicant's goods and services. In considering whether a mark is merely descriptive, the question is whether the mark "only" tells the potential purchaser what the goods or services are, their function, their characteristics, their use, or their ingredients. Here, Applicant's mark does not "only" describe or "only" tell potential purchasers about the nature, function, characteristics or purpose of Applicant's goods or services in Classes 9, 16, 25, 35 or 41, because SNEEZING BABY PANDA in connection with the goods and services applied for in those classes is an incongruous expression, *see* Blisscraft of Hollywood v. United Plastics Company, 294 F.2d 694, 131 U.S.P.Q. 55 (2nd Cir. 1961) and Colonial Stores Inc., 394 F.2d 549, 157 USPQ 382 (C.C.P.A. 1968).

Applicant's mark is a word combination that is not readily recognizable as describing a particular characteristic, purpose or feature of applicant's goods with any degree of specificity. The mark does not convey any immediate and unambiguous meaning.

The three-word compound mark creates ambiguity. In consequence thereof, actual and prospective consumers who encounter the mark in connection with Applicant's goods or services in the marketplace would have to engage in a multi-stage reasoning process, involving pausing, reflecting and then speculating on the significance of the combined designation, in order to understand how it relates to Applicant's goods.

Thus, the mark SNEEZING BABY PANDA for Applicant's goods and services, as amended, is

not merely descriptive of any characteristic, purpose or feature of Applicant's goods and services in the relevant classes. Accordingly, Applicant respectfully requests that the Examining Attorney withdraw the refusal of registration on grounds of descriptiveness.

Applicant reemphasize that it is the policy of the U.S. Patent and Trademark Office to resolve any doubt as to descriptiveness in favor of Applicant. In re Women's Publishing Co., 23 USPQ2d 1876, 1878 (TTAB 1992) (citing In re Merrill, Lynch, Pierce, Fenner & Smith, Inc., 822 F.2d 1567, 4 USPQ2d 1141, 1144 (Fed. Cir. 1987)). The distinction between merely descriptive and suggestive is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. In re George Weston Ltd., 228 USPQ 57, 58 (TTAB 1985). Accordingly, to the extent there may be any doubt as to whether an Applicant's mark is merely descriptive or suggestive, such doubt is resolved, in accordance with the Board's policy, in favor of the applicant by allowing publication of the mark for opposition.

Upon publication of Applicant's mark, anyone who believes that they would be damaged by the registration of the mark will have the opportunity to file an opposition thereto. Such an entity may well be in a stronger position to make the case for competitive need for use of this term than is the Office in an ex parte context. In re Merrill Lynch, Pierce, Fenner, and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987). Further, anyone who believes he or she will be injured by the registration of SNEEZING BABY PANDA "will have an opportunity to develop a factual record upon which the question of descriptiveness could be adjudicated with more confidence than it can be on the basis of *a priori* assumptions." In re Waverly Inc., 27 USPQ2d 1620, 1624 (TTAB 1993), citing In re Merrill Lynch, Pierce, Fenner & Smith, 828 F.2d at 1571.

In response to the Examining Attorney's request for additional information about the applied for goods and services, Applicant previously submitted that its applied for goods and services, as amended, do not necessarily have to do with pandas, but rather may feature animals generally, nature and the environment. Additional information about the Applicant was amply provided in its previous response to office action, much of which was made of record by the Examining Attorney in his first office action. Applicant specifically stated in its first response that: "[C]urrently only t-shirts bearing the mark are available for purchase online, but Applicant intends to extend the range of merchandise available for purchase in the United States and elsewhere. Such merchandise is not intended to be limited in subject matter to pandas, but rather will feature animals generally, nature and the environment."

Since the application is a Madrid System extension of protection based on Section 66(a) of the Trademark Act, founded on Applicant's intent to use the mark in United States commerce, Applicant submits that its previous response to office action, together with the information the Examining Attorney has already made of record, is sufficient to permit proper examination of the application. The Examining Attorney's renewed request merely parrots boilerplate office action verbiage appropriate to a use-based application under Section 1(a), but inappropriate to examination of an application based on bona fide intent to use in U.S. commerce, e.g., under Sections 1(b) or 66(a).

Nevertheless, Applicant hereby volunteers the additional information for the Examining Attorney's consideration attached to this response consisting of various third party webpages corroborating and attesting to the fame of the Film Footage and Applicant's association with the mascot for its applied for goods and services dubbed SNEEZING BABY PANDA. This additional information and submitted materials, together with the evidence and submissions of record, more than amply demonstrate the capacity of SNEEZING BABY PANDA to serve as a non-descriptive source indicator for Applicant's goods and services, and Applicant's entitlement to exploit same as a trademark in United States commerce, as it intends to do.

Based on all of the foregoing, Applicant respectfully requests that the Examining Attorney withdraw the refusal under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), and allow the application to proceed to publication.

EVIDENCE

Evidence in the nature of webpages has been attached.

Original PDF file:

[evi_71189193159-214928414_.nny_Music_Videos_From_YouTube_Comedy_Week_2013_-_CraveOnline.pdf](#)

Converted PDF file(s) (7 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

Original PDF file:

[evi_71189193159-](#)

[214928414 . e News Gregory Brothers Give A History Of YouTube Styleite.pdf](#)

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[Evidence-1](#)

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[Evidence-4](#)

Original PDF file:

[evi_71189193159-214928414 . Sneezing Baby Panda Know Your Meme.pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

Original PDF file:

[evi_71189193159-214928414 . Sneezing baby panda now a thing we can look forward to.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_71189193159-214928414 . Sneezing Baby Panda to star in feature film - JSOnline.pdf](#)

Converted PDF file(s) (4 pages)

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[evi_71189193159-214928414 . deos to inspire brands to create their own - Marketing News .pdf](#)

Converted PDF file(s) (6 pages)

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[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

APPLICANT AND/OR ENTITY INFORMATION

Applicant proposes to amend the following:

Current: Wild Candy Pty Ltd a(n) private company limited by shares (prc), legally organized under the laws of AU, having an address of

PO Box 286
COOROY QLD, 4563
Australia

Proposed: Wild Candy Pty Ltd, proprietary limited company (p/l or pty. ltd.) legally organized under the laws of Australia, having an address of

PO Box 286
COOROY QLD, 4563

Australia

ADDITIONAL STATEMENTS

Miscellaneous Statement

Regarding the Examining Attorney's request for further information in regard to the applied for goods in Classes 3, 5, 21, 28 and 30, Applicant replies as follows: 1. Do any of the goods feature images and/or information of a sneezing baby panda? The goods may or may not do so. 2. Do any of the goods feature images and/or information of a panda? The goods may or may not do so. 3. Do any of the goods take the form/shape of a sneezing baby panda? The goods may or may not do so. 4. Do any of the goods take the form/shape of a panda? The goods may or may not do so. 5. Are any of the identified goods intended for use with a panda? The goods may or may not do so.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /wjs/ Date: 10/11/2013

Signatory's Name: Willlliam J. Seiter

Signatory's Position: Attorney

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 79123938

Internet Transmission Date: Fri Oct 11 22:08:51 EDT 2013

TEAS Stamp: USPTO/RFR-71.189.193.159-201310112208517

37938-79123938-500ebe9fa51f12db6331eb9a4

3e5cec463962e381f5b3f2414793d9084a36b931

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10 Funny Music Videos From YouTube Comedy Week 2013

Lonely Island, Reggie Watts and Key of Awesome all sing for your views!

May 24th, 2013 Geoffrey Golden

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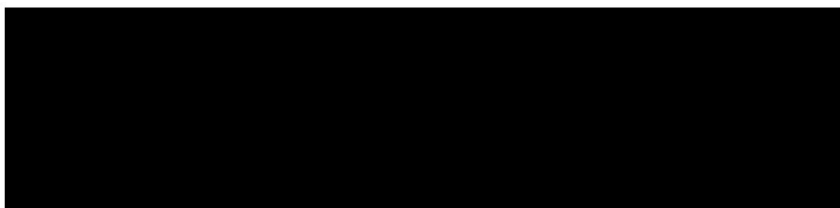
+1

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YouTube spent this week celebrating comedy on their site, and not the guy-getting-hit-in-nuts variety that typically dominates the tubes. Top YouTube creators all released new clips for YouTube Comedy Week, including some hilarious music videos. Here are 10 funny music videos from YouTube Comedy Week 2013:

“Diaper Money” – The Lonely Island



MOST CRAVED

ENTERTAINMENT



VIDEO: Archer Season 5 Goes to the Danger Zone



Fox Tests Actors for Fantastic Four Reboot

GAMING

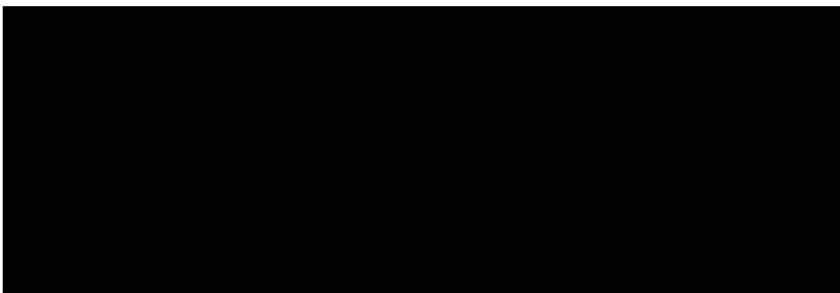


Will Assassin's Creed go to Egypt?



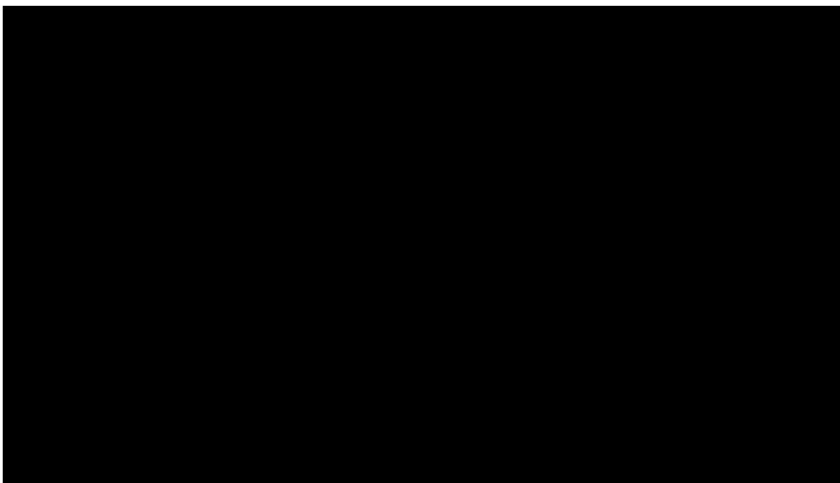
Drakengard 3 Will Get American Release

SPORTS



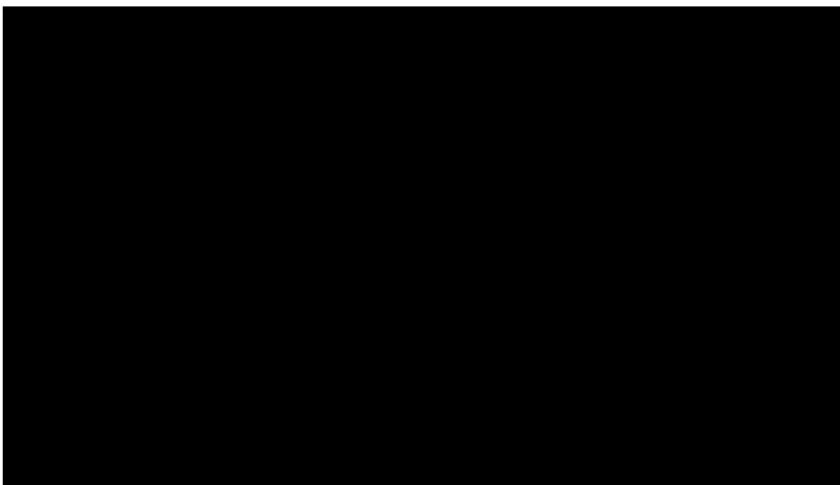
Babies – I mean, shorties – require a lot of diaper money.

“The History of YouTube” – The Gregory Brothers

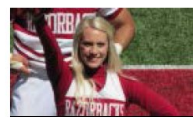


Sneezing Panda is the greatest muse of our generation.

“Start A Mumford Band!” – Key Of Awesome



They had Instagram in the late 1800s, right?



VIDEO: One-Legged
Arkansas
Cheerleader Inspires



Angry Fans Show up
at Matt Schaub's
House

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TV

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'We Are Everyone'



COMICS

NYCC 2013:
Stephanie Brown
Returns in 'Batman
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SPORTS

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By France, Osieck
Fired



FILM

The Chucky Files #4:
Don Mancini on Bride
of Chucky



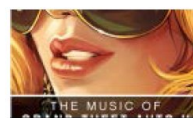
GAMING

Turtle Beach Has 4
Headsets Ready for
PS4 Launch



LIFE & STYLE

BaseCamp Young
Hostel Bonn: The
Most Original Hostel in
the World



MUSIC

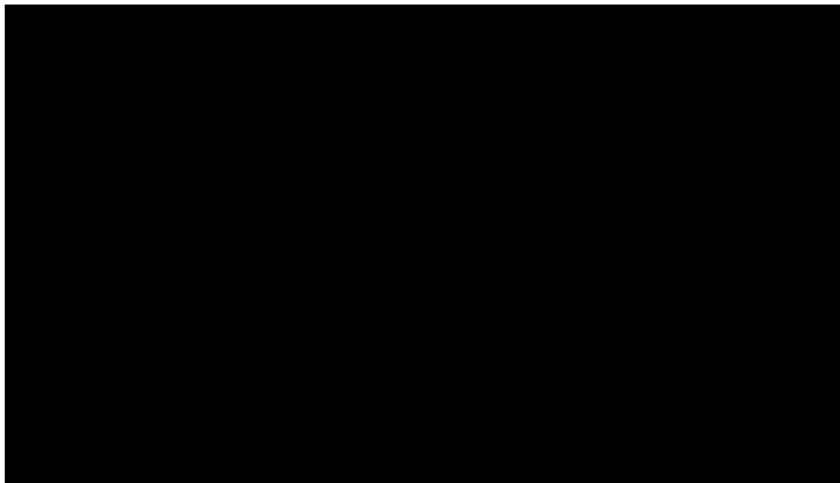
Daz Dillinger Accuses
'GTA 5' Makers of
Stealing His Songs

"Perfect Night" – Sarah Silverman feat. Will.i.am



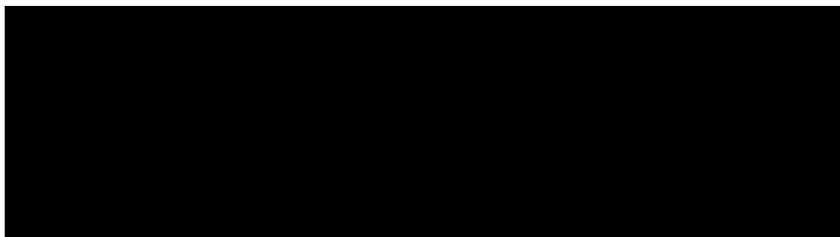
She waters her plants with the *most* attitude.

"Save The Badger Badger Badger" – Mr. Weebl



You make a very convincing argument in favor of badgers, sir.

"Finish What We Started" – Miles Fisher





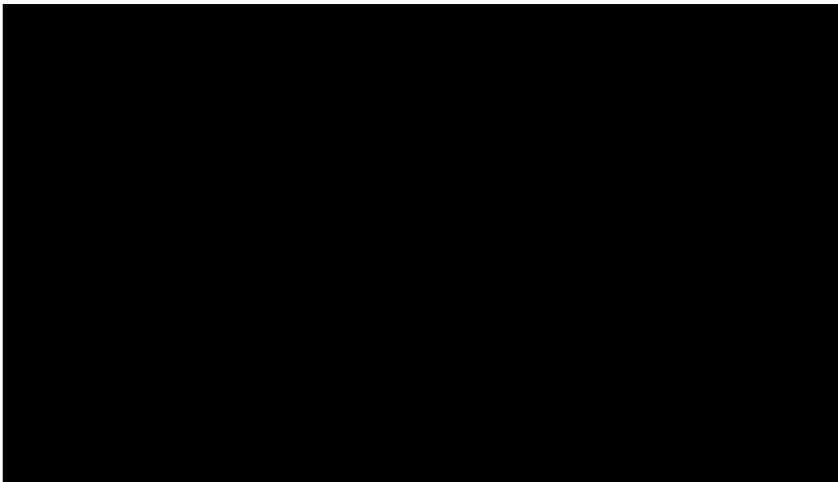
Oh hey, *there's* Lance Bass.

"Guitar Warfare" – TomSka



The uke gets rebuked.

"99 Problems (Food Cover)" – Sorted



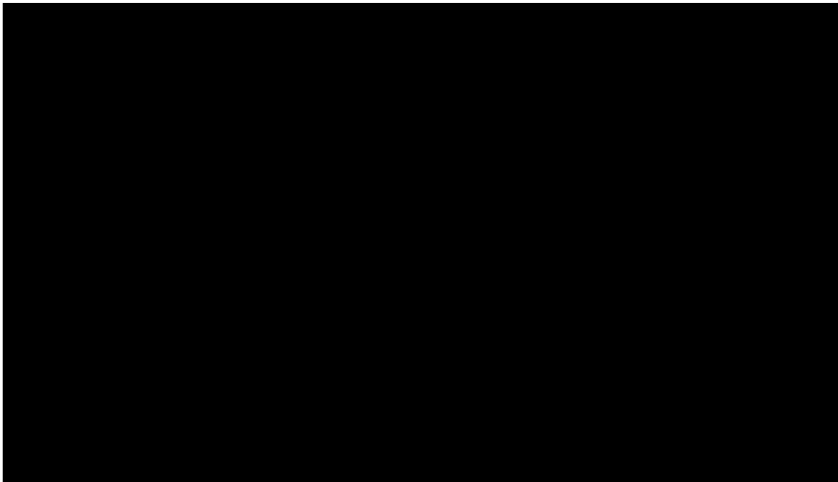
Brown bags to delicious, cause I ain't dumb.

"Semi On The Dancefloor" – YouTube Creators Vs. Doc Brown



Not even Belgian politics will save you now!

"Reg Rolled" – Reggie Watts



Why did I have to wait until 2013 for this?

Geoffrey Golden is the Editor in Chief of [The Devastator](#): The Quarterly Comedy Magazine For Humans!

New in Life & Style



BaseCamp Young
Hostel Bonn: The
Most Original Hostel
in the World



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Camera Puts Your
Old Polaroid to
Shame

Supermarket
Suckage: The 12
Worst Things About
Every Grocery Store



7 Funny Chucky
Pranks

Clocked Out: NYCC,
Arctic Monkeys, GTA
Online and The Wild
Feathers



The Big List: Tourists
Defy U.S.
Government! Most
Offensive Team
Names!

Not-So-Low Fat: 11
Foods That Are
Deceptively
Unhealthy



5 Funny Videos
Starring Tom Hanks

Trust me bro



Check Out Ladies of
Machette Kills



Behind the Scenes of
Machete Kills



5 Weird Facts About
Game Of Thrones



WonderCon 2013
Cosplay Photo
Gallery

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Upscale Redesign for 2013](#) Nissan

[Sexy "True Blood" Star Janina
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[Buffett: Scrap Obamacare and Start All
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A Twerktastic Guide to Your Miley Cyrus Halloween Costume



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WATCH: Auto-Tune The News Breaks Down YouTube History

by Deenie Hartzog | 12:50 pm, May 25th, 2013



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5

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It's no doubt that **YouTube** has completely altered the way we receive media. Just think, if it weren't for YouTube, where would **Justin Bieber** be? We'd have never seen *all* the parodies of "**Single Ladies**," we'd have been deprived of "**Charlie Bit My Finger**," and don't even talk about life without "**The Sneezing Baby Panda**."

Here, the **Gregory Brothers** of **Auto-Tune The News** (um, "Hide ya kids, hide ya wife" ring a bell?) give a history of YouTube in honor of its 8th anniversary this month.



[auto tune the news](#) [the gregory brothers](#) [Youtube](#)



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PHOTOS: Model's Too-Tiny Bikini Malfunctions At Miami Swim Week

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Sneezing Baby Panda

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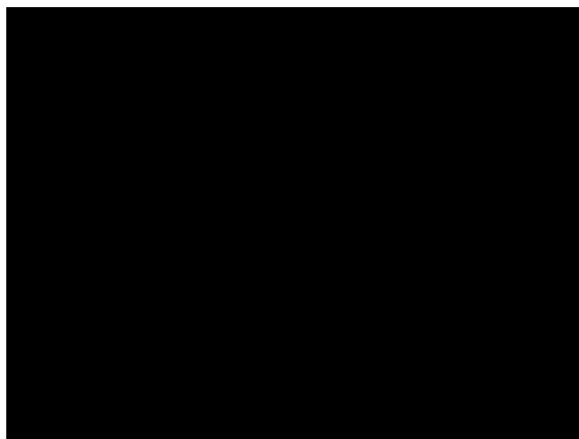
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About

Sneezing Baby Panda is a [viral video](#) uploaded to [YouTube](#) on November 6th, 2006 that depicts a mother panda at the Wolong Panda Breeding Centre munching on bamboo while her baby cub sleeps at her feet. Out of nowhere, the baby sneezes, startling the mother for a second before she returns to her food. As of August 2013, the video was been viewed more than 162.7 million times and was named #10 on [Urlesque's](#)^[1] 100 Most Iconic Internet Videos in April 2009.

[[more information needed... just who is this mysterious Panda?!]]

Origin



Remixes / Tributes

Meme

Status:

Confirmed

Year

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animals, youtube, panda, japan, cute, short

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In case you've missed it, watch Know Your Meme's report on [Brother Sharp](#)! For related discussions, check out the [episode comments](#).



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The video has been parodied on a South Park Episode



Slow motion video of the original is also popular

While less popular, another video of panda sneezing

- Collegehumor listed "Sneezing Baby Panda" in their Web Celeb Hall of Fame.

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^[1]Urlesque – Sneezing Baby Panda – #10 – The 100 Most Iconic Internet Videos

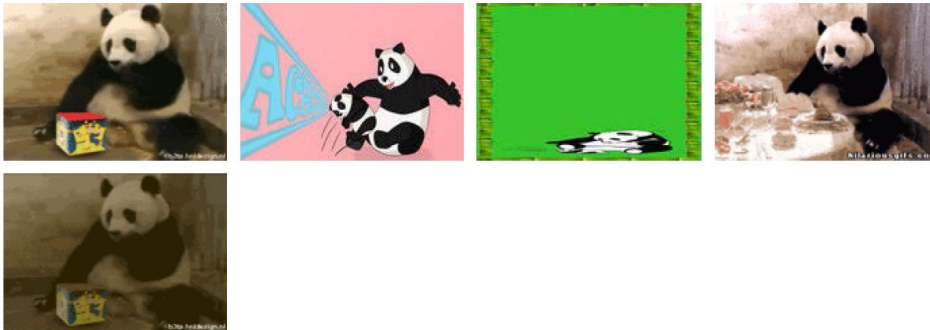
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Sneezing baby panda now a thing we can look forward to

By Sarah Kliff, Published: August 27 at 1:00 pm [E-mail the writer](#)

Is [this chart](#) about pandas enough Wonkblog baby panda coverage? No, of course not! To mark the occasion of our new arrival, here's what would argue is the best baby panda video of all time.

Washingtonian has gone the extra mile and put together a longer list of YouTube's best panda videos, which you can watch [right here](#).

Sarah Kliff covers health policy, focusing on Medicare, Medicaid and the health reform law. She tries to fit in some reproductive health and education policy coverage, too, alongside an occasional hockey reference. Her work has appeared in Newsweek, Politico, and the BBC. She is on [Twitter](#) and [Facebook](#).

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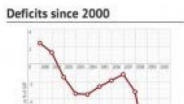
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zosima wrote:

8/27/2013 10:36 AM PDT

Youtube, in all its brilliance, pops an add up on the panda right before it sneezes. Yay.

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nitrat responds:

8/27/2013 2:55 PM PDT

yeah, but I still watched it 3 times, laughing out loud every time.

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The Washington Post

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Sneezing Baby Panda to star in feature film

By **Jackie Loohuis-Bennett** of the Journal Sentinel

He's an explosive-- and we mean explosive-- star.

Sneezing Baby Panda turned a big "a-choo!" into international stardom when his video clip went viral and more than 106 million visitors watched him do his snort. | [June 30, 2011](#) »[Read Full Article](#)

Firm to design Les Paul exhibit at Waukesha museum

By **Mike Johnson** of the Journal Sentinel

Waukesha - In the works for more than eight years, a permanent exhibit about the life and career of music legend Les Paul at the Waukesha County Museum is getting a little closer to becoming reality.

The museum announced that it has hired BRC Imagination Arts of Burbank, Calif., to design the exhibit to commemorate Paul, known as the Wizard of Waukesha. | [Aug. 13, 2011](#) »[Read Full Article](#)  (4)

Nicholas Frank resigns as curator at UWM's Inova

By **Mary Louise Schumacher** of the Journal Sentinel

Nicholas Frank has resigned his position as curator at Inova at the University of Wisconsin-Milwaukee, one of the city's premier venues for contemporary art. This departure raises many questions about the future of this important institution and the role of contemporary art in Milwaukee's visual art community.

Frank has a long history in Milwaukee as a thoughtful writer and curator. For many years he ran the Hermetic gallery, a space for challenging, contemporary art. And he has been engaged in projects such as the Milwaukee International, an alternative art fair that brought well regarded galleries from around the world to a Riverwest beer hall for a weekend. | [Aug. 13, 2011](#) »[Read Full Blog Post](#)  (8)

License to return: Austin Powers coming back


It may or may not make you want to say, "Yeah, baby, yeah," but Austin Powers is finally coming back.

Movie site [Hitfix](#) reports that Mike Myers has signed a deal to return to the role of the shagadelic, not-so-secret agent in "Austin Powers 4." No word on a director or when the movie would actually be released. | [Aug. 13, 2011](#) »[Read Full Article](#)

Chamber Theatre embraces humor, hope in 'Crimes of the Heart'

By Mike Fischer, Special to the Journal Sentinel

Early in the third act of Beth Henley's "Crimes of the Heart," two of the three Magrath sisters return from the hospital to their Mississippi home, telling the third sister that their dying grandfather has slipped into a coma.

"It's not funny," intones Lenny, oldest and most serious of the three. "It's sad. It's very sad." | [Aug. 13, 2011](#) »[Read Full Article](#)  (1)

Reports: Depp's 'Lone Ranger' movie gunned down

Disney has shut down production of one of next year's most anticipated movies, "The Lone Ranger," over cost

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concerns.

Deadline Hollywood Daily, which first reported the news Friday night, said the studio was trying to get the movie's costs down to \$200, but the filmmakers weren't able to get close to that. | [Aug. 13, 2011](#) »[Read Full Article](#)

L.A. sheriff: Rapper's tweet incited phone call barrage

By Associated Press, Associated Press

Los Angeles - The Los Angeles County sheriff's department says [The Game incited a flood of phone calls that overwhelmed the emergency phone system.](#)

Sheriff's Capt. Mike Parker tells the Los Angeles Times that the rapper tweeted the number of the sheriff's Compton station Friday and told his 580,000 followers that if they wanted an internship with him, they should call the number. | [Aug. 13, 2011](#) »[Read Full Article](#)

Patio Pooch Week at Cafe Manna

By **Carol Deptolla** of the Journal Sentinel

Dogs — well, dogs with good manners— are always welcome on the patio at [Cafe Manna](#), 3815 N. Brookfield Road in Brookfield, but from Monday through Aug. 20, the vegetarian restaurant is having Patio Pooch Week.

Dog guests will receive house-made dog treats and bowls of water all week. Monday, human guests will get a treat, too, and at lunch a representative from the Wisconsin Humane Society will be on hand to answer questions about the society. | [Aug. 13, 2011](#) »[Read Full Blog Post](#)

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Ten top viral videos to inspire brands to create their own

May 16, 2012

By Helen Lawson, senior PR account manager, Pauley Creative

Viral videos can be great fun, great for branding and great for reach without necessarily having access to spectacular budgets.

The brilliant thing about these videos is that they have the magical ability to take you out of your 'construction' pigeonhole. The techniques and tactics which make a great viral will transcend your industry labels and appeal directly to basal human instincts... curiosity, sympathy, humour, sociability.



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- ▶ 12 year-old app developer viral sensation
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Reviewing some of the greatest viral videos from the past few years, it's clear to see trends in some of the more successful tactics employed by the creative agencies.

Here are our top ten tips for making a successful viral video.

1) Play the numbers game

Simply put, the more videos you produce, the greater your chances that one of them will go viral. Trial and error will definitely be employed when you first venture into the world of video, and you may find that creating lots of videos pays off by giving you first hand experience in what your audience likes to watch. Create a YouTube channel and add content regularly - like home builders Taylor Wimpey did here:

2) Get funny

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Laughter is infectious... everybody likes a giggle and I'd bet that your first reaction when you've watched or seen something funny is to share it with your friends and work colleagues. This is the 'sharing' wave you'll be trying to catch with your video. This cute but rather funny 'sneezing baby Panda' video clip was recently at the top of the YouTube most watched list:

3) Showcase techniques such as stop motion, time lapse, action figures, even Lego building skills

People love visually compelling content and one way to create it is to experiment with filmmaking techniques to try and show people something they haven't seen before, particularly if you're showcasing product that isn't visually stimulating on its own. Videos that are unexpected get people excited and foster a "saw it first" mentality. Take a look at Nokia's "Gulp" video for some inspiration, or these Lego building skills on this Eddie Izzard clip:

4) Add value

Use your video to educate your audience – teach them something they didn't know beforehand and if it's interesting enough, they'll want to share it. This popular time lapse video of the Ark Hotel construction project doesn't just look impressive, it is punctuated with interesting facts throughout:

5) Hijack an existing fan base

Geeks make an easy target! Car geeks, movie geeks, sport geeks, pet geeks... tying up the theme of your video with an already existing fan base will add an extra string to your popularity bow. You might choose to integrate catch phrases, images or associations that will capture your audience's attention. This completely pointless, yet massively successful viral video incorporates two fan bases – followers of the Indiana Jones franchise and Lego geeks, just take a look at the geeky comments still being posted on the video nearly four years after the video was added. Take a look:

6) Promote engagement

Why not incorporate an interactive element into your video, or some sort of level of engagement to allow your audience to directly interact with your brand or product? Here's a nice example from Tippex. Funny, and interactive!

7) Employ shock tactics

Not 'shock horror', but rather trying to 'wow' your audience somehow. Creating a video that challenges your audience and makes them question what they already know will prompt the start of a discussion within the industry. For example, Relativity Media did this to great success with the Times Square billboard hack viral it created to promote the release of the Limitless movie last year. Here is video one (there is also a follow up which links the momentum of the viral to the movie on YouTube):

8) Embrace the unexpected

The appearance of your product or brand in a video that's already gaining momentum online can be shocking. Depending on the tone of the mention, challenge yourself to embrace it and capitalise on the popularity of the video. Perhaps create a second, follow-up video with a humorous angle, or just be certain to capture passing traffic through SEO, PPC and online banner adverts.

This classic 'Cat vs Printer' was a sensation back in 2010 but remains massively popular. If we had been working with Lexmark, we would definitely have embraced this as an opportunity and created a follow up campaign for this:

9) Push the boundaries of what's comfortable or expected from your brand

This is today's 'please think outside the box' call to action! If you've got a brand that people associate with one audience or attitude, doing something very unexpected will draw attention in itself. For example, when Woolite hired rock musician and horror movie director Rob Zombie to direct an advert for them in 2011, the chatter around the strangeness of that choice made it massively popular:

10) Combine all these techniques

What you might consider to be a 'dull' or 'uninteresting' brand or product, can be given new life with by applying a few of these viral video techniques. For example a recent video that was created by the Duck Tape brand pushed the boundaries of what was comfortable for their brand, hijacked an enormous, incorporated humour, a massive geeky fan base, and an interesting visual technique (stop motion). Watch this:

Have you spotted any great viral videos recently, or considered creating your own viral video? What risks did you take and what challenges did you overcome? We're looking forward to hearing about your experiences!

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